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DEC 23
CHARLES ELMORE CROPLEY

Supreme Court of the United States

OCTOBER TERM, 1943

No. 183

B. H. Inness Brown, David Paine, Ethelbert Warfield, et al.,

Petitioners,

vs.

John Gerdes and James D. Carpenter, Jr., Trustees of Reynolds Investing Co., Inc., Debtor,

Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK.

APPENDICES TO PETITIONERS' BRIEF

David Paine,
Lawrence S. Greenbaum,
William C. Scott,
Solicitors for Petitioners.

Theodore S. Jaffin,
James F. Dwyer,
of Counsel.

APPENDIX A

Chronology

May 18, 1938	Petitioner for reorganization under Bankruptcy Act filed against Reynolds Investing Co., Inc., in United States District Court, New Jersey (R. 11, 98).
June 22, 1938	Reynolds Investing Co., Inc., by resolution of its board engaged the Attorneys to investigate claims of the company (R. 11).
Aug. 1, 1938	Order by Judge Fake of Bankruptcy Court on application by president of Reynolds Investing Co., Inc., authorizing suit by the corporation through these Attorneys. No provision for payment of fees (R. 12, 98).
Aug. 4, 1938	Suit begun by the corporation in the New York Supreme Court against Reynolds, Woodward et al. (Action No. 1) (R. 12, 98).
Sept. 22, 1938	Chapter X, Bankruptcy Act, became effective.
Jan. 19, 1939	Order of Bankruptcy Court appointing Gerdes and Carpenter Trustees of Debtor and authorizing them to be substituted as plaintiffs in Action No. 1. No provision for payment of fees (R. 12, 98).
Feb. 10, 1939	Order of State Court, on application of Trustees, substituting them as plaintiffs in Action No. 1 (R. 12, 98).

Jan. 16, 1940	Suit commenced by Trustees in the New York Supreme Court against Globe Indemnity Company pursuant to the order of Judge Fake (Globe Action) (R. 19, 98).
May 29, 1940	Suit commenced by Trustees in New York Supreme Court against C. K. Reynolds et al. pursuant to order of Judge Fake (Action No. 2) (R. 16, 98).
June 17, 1940	Order signed by Judge Fake confirming Plan of Reorganization which for the first time included a general provision for payment of fees (R. 62-67, 32-55).
Apr. 24, 1941	Interlocutory judgment by Justice Walter of New York Supreme Court in favor of the plaintiffs in Action No. 1 and directing reference to ascertain damages (R. 14-15, 98).
June 3, 1941	Before completion of hearings before Referee in Action No. 1 and prior to trial of Action No. 2 and Globe Action, Trustees send letter of discharge to Attorneys (R. 20, 22-23, 98-99).
June 20, 1941	Proceedings begun by Trustees before Judge Fake to compel Attorneys to turn over papers (R. 20, 99).
July 9-10, 1941	Motion to turn over withdrawn by Trustees; stipulation signed and "so ordered" by Judge Fake attached to the stipulation authorizing lien proceeding by Attorneys in State Court (R. 21, 24-26, 99).
Nov. 5, 1941	Reference completed (Action No. 1) under the decision of Justice Walter and final judgments entered for the plaintiffs (R. 15).

Dec. 22, 1941	Lien proceedings commenced by Attorneys in State Court (R. 10 et seq.).
Mar. 6, 1942	Order by Justice Walter overruling Trustees' objection to jurisdiction of State Court (R. 4-5).
Mar. 31, 1942	First hearing held by Justice Walter to fix amount of liens (R. 69 et seq.).
Apr. 8, 1942	Second hearing held by Justice Walter to fix amount of liens (R. 85 et seq.).
Apr. 15, 1942	Final order signed by Justice Walter fixing the liens (R. 6-8, 109-113).
June 19, 1942	Appellate Division, Supreme Court, affirmed Justice Walter's orders (R. 118-119).
Apr. 22, 1943	Court of Appeals by vote of 4 to 3 reversed orders of Justice Walter and Appellate Division and dismissed lien proceedings (R. 129-130).
May 27, 1943	Reargument denied by Court of Appeals (R. 130-131).
Oct. 11, 1943	Certiorari granted by U. S. Supreme Court (R. 133).

APPENDIX B

Federal Statutes

JUDICIAL CODE, SECTION 256
(28 U. S. C. 371).

EXCLUSIVE JURISDICTION OF UNITED STATES COURTS.

The jurisdiction vested in the courts of the United States in the cases and proceedings hereinafter mentioned shall be exclusive of the courts of the several States: * * *

Sixth. Of all matters and proceedings in bankruptcy.

Federal Bankruptcy Act

SEC. 23. JURISDICTION: UNITED STATES AND STATE COURTS.

a. The United States district courts shall have jurisdiction of all controversies at law and in equity, as distinguished from proceedings in bankruptcy, between trustees as such and adverse claimants, concerning the property acquired or claimed by the trustees, in the same manner and to the same extent only as though bankruptcy proceedings had not been instituted and such controversies had been between the bankrupts and such adverse claimants.

b. Suits by the trustees shall only be brought or prosecuted in the courts where the bankrupt, whose estate is being administered by such trustee, might have brought or prosecuted them if proceedings in bankruptcy had not been instituted unless by consent of the proposed defendant, except suits for the recovery of property under section 96, subdivision (b), of this title; section 107, subdivision (e) of this title; and section 110, subdivision (e) of this title.

SEC. 62. EXPENSES OF ADMINISTERING ESTATES; UNAUTHORIZED SHARING OF FEES; WITHHOLDING ALLOWANCES.—a. The ctual and necessary costs and expenses incurred by offiers in the administration of estates shall, except where ther provisions are made for their payment, be reported detail, under oath, and examined and approved or dispproved by the court. If approved, they shall be paid or llowed out of the estates in which they were incurred.

c. A custodian, receiver, or trustee or the attorney or any of them, or any other attorney, rendering services a proceeding under this Act or in connection with such roceeding, shall not in any form or guise share or agree share his compensation for such services with any perpn not contributing thereto, or share or agree to share the compensation of any person rendering services in proceeding under this Act, or in connection with such roceeding, to which services he has not contributed: *Proided, however,* That an attorney-at-law may share such ompensation with a law partner or with a forwarding ttorney-at-law, and may share in the compensation of a aw partner.

d. A custodian, receiver, or trustee or the attorney for ny of them, or any other attorney, seeking compensation or services rendered by him in a proceeding under this ct or in connection with such proceeding, shall file with he court his petition setting forth the value and extent f the services rendered, the amount requested and what llowances, if any, have theretofore been made to him. uch petition shall be accompanied by his affidavit stating hether an agreement or understanding exists between the etitioner and any other person for a division of compenation and, if so, the nature and particulars thereof. If atisfied that the petitioner has, in any form or guise, shared r agreed to share his compensation or in the compensation any other person contrary to the provisions of this subivision, the court shall withhold all compensation from uch petitioner.

SEC. 67. LIENS AND FRAUDULENT TRANSFERS.— • • •

b. The provisions of section 60 of this Act to the contrary notwithstanding, statutory liens in favor of employees, contractors, mechanics, landlords, or other classes of persons, and statutory liens for taxes and debts owing to the United States or any State or subdivision thereof, created or recognized by the laws of the United States or of any State, may be valid against the trustee, even though arising or perfected while the debtor is insolvent and within four months prior to the filing of the petition in bankruptcy or of the original petition under chapters X, XI, XII, or XIII of this Act, by or against him. Where by such laws such liens are required to be perfected and arise but are not perfected before bankruptcy, they may nevertheless be valid, if perfected within the time permitted by and in accordance with the requirements of such laws, except that if such laws require the liens to be perfected by the seizure of property, they shall instead be perfected by filing notice thereof with the court.

SEC. 111. EXCLUSIVE JURISDICTION OVER DEBTOR AND PROPERTY.

Where not inconsistent with the provisions of this chapter, the court in which a petition is filed shall, for the purposes of this chapter, have exclusive jurisdiction of the debtor and its property, wherever located.

SEC. 114. MATTERS UPON APPROVAL OF PETITION; JURISDICTION, POWERS, AND DUTIES.

Upon the approval of a petition, the jurisdiction, powers, and duties of the court and of its officers, where not inconsistent with the provisions of this chapter, shall be the same as in a bankruptcy proceeding upon adjudication.

SEC. 116. SAME; ADDITIONAL JURISDICTION OVER ADMINISTRATION OF ESTATE.

Upon the approval of a petition, the judge may, in addition to the jurisdiction, powers, and duties hereinabove and elsewhere in this chapter conferred and imposed upon him and the court— • • •

(2) authorize a receiver, trustee, or debtor in possession, upon such notice as the judge may prescribe and upon cause shown, to issue certificates of indebtedness for cash, property, or other consideration approved by the judge, upon such terms and conditions and with such security and priority in payment over existing obligations, secured or unsecured, as in the particular case may be equitable.

SEC. 148. ORDER OF APPROVAL AS STAY OF OTHER PROCEEDINGS.

Until otherwise ordered by the judge, an order approving a petition shall operate as a stay of a prior pending bankruptcy, mortgage foreclosure, or equity receivership proceeding, and of any act or other proceeding to enforce a lien against the debtor's property.

SEC. 206. PERSONS ENTITLED TO HEARINGS.

The debtor, the indenture trustees, and any creditor or stockholder of the debtor shall have the right to be heard on all matters arising in a proceeding under this chapter. The judge may, for cause shown, permit a labor union or employees' association, representative of employees of the debtor, to be heard on the economic soundness of the plan affecting the interests of the employees.

SEC. 216. PROVISIONS OF PLAN.

A plan of reorganization under this chapter— • • •

(2) may deal with all or any part of the property of the debtor;

(3) shall provide for the payment of all costs and expenses of administration and other allowances which may be approved or made by the judge; • • •

(10) shall provide adequate means for the execution of the plan, which may include: the retention by the debtor of all or any part of its property; the sale or transfer of all or any part of its property to one or more other corporations theretofore organized or thereafter to be organized; the merger or consolidation of the debtor with one or more other corporations; the sale of all or any part of its property, either subject to or free from any lien, at not less than a fair upset price and the distribution of all or any assets, or the proceeds derived from the sale thereof, among those having an interest therein; the satisfaction or modification of liens; the cancellation or modification of indentures or of other similar instruments; the curing or waiver of defaults; the extension of maturity dates and changes in interest rates and other terms of outstanding securities; the amendment of the charter of the debtor; the issuance of securities of the debtor or such other corporations for cash, for property, in exchange for existing securities, in satisfaction of claims or stock or for other appropriate purposes; • • •

(13) may include provisions for the settlement or adjustment of claims belonging to the debtor or to the estate; and shall provide, as to such claims not settled or adjusted in the plan, for their retention and enforcement by the trustee or, if the debtor has been continued in possession, by an examiner appointed for that purpose; • • •

SEC. 221. CONFIRMATION BY COURT.

The judge shall confirm a plan if satisfied that—

(4) all payments made or promised by the debtor or by a corporation issuing securities or acquiring property under the plan or by any other person, for services and for

costs and expenses in, or in connection with, the proceeding or in connection with the plan and incident to the reorganization, have been fully disclosed to the judge and are reasonable or, if to be fixed after confirmation of the plan, will be subject to the approval of the judge;

SEC. 227. EXECUTION OF INSTRUMENTS, SATISFACTION OF LIENS, ETC.

The court may direct the debtor, its trustee, any mortgagees, indenture trustees, and other necessary parties to execute and deliver or to join in the execution and delivery of such instruments as may be requisite to effect a retention or transfer of property dealt with by a plan which has been confirmed, and to perform such other acts, including the satisfaction of liens, as the court may deem necessary for the consummation of the plan.

SEC. 241. PETITIONING CREDITORS; COURT OFFICERS; ATTORNEYS THEREFOR.

The judge may allow reimbursement for proper costs and expenses incurred by the petitioning creditors and reasonable compensation for services rendered and reimbursement for proper costs and expenses incurred in a proceedings under this chapter—

(3) by the trustee and other officers, and the attorneys for any of them;

(4) by the attorney for the debtor; * * *

SEC. 242. REPRESENTATIVES AND OTHER PARTIES IN INTEREST; ATTORNEYS THEREFOR.

The judge may allow reasonable compensation for services rendered and reimbursement for proper costs and expenses incurred in connection with the administration of an estate in a proceeding under this chapter or in connection with a plan approved by the judge, whether or

not accepted by creditors and stockholders or finally confirmed by the judge—

(1) by indenture trustees, depositaries, reorganization managers, and committees or representatives of creditors or stockholders;

(2) by any other parties in interest except the Securities and Exchange Commission; and

(3) by the attorneys or agents for any of the foregoing except the Securities and Exchange Commission.

SEC. 243. CREDITORS AND STOCKHOLDERS; ATTORNEYS THEREFOR.

The judge may allow reasonable compensation for services rendered and reimbursement for proper costs and expenses incurred by creditors and stockholders, and the attorneys for any of them, in connection with the submission by them of suggestions for a plan or of proposals in the form of plans, or in connection with objections by them to the confirmation of a plan, or in connection with the administration of the estate. In fixing any such allowances, the judge shall give consideration only to the services which contributed to the plan confirmed or to the refusal of confirmation of a plan, or which were beneficial in the administration of the estate, and to the proper costs and expenses incidental thereto.

SEC. 244. PETITION FILED IN PENDING BANKRUPTCY PROCEEDING.

Where a petition is filed under section 127 of this Act, the judge may allow, if not already allowed, reasonable compensation for services rendered and reimbursement for proper costs and expenses incurred in the pending bankruptcy proceeding—

(1) by a marshal, receiver, or trustee, as provided in subdivision g of section 48 of this Act, and the attorneys for any of them;

(2) by the attorney for the petitioning creditors;

(3) by the attorney for the bankrupt; and

(4) by any other persons and the attorneys for any of them entitled under this Act to compensation or reimbursement in such bankruptcy proceeding.

SEC. 245. SAME; REFEREE IN BANKRUPTCY.

Where a petition is filed in a pending bankruptcy proceeding, the judge may allow reasonable compensation for services rendered and the proper costs and expenses incurred in such bankruptcy proceeding by a referee in bankruptcy. In fixing such compensation, the judge shall not be restricted by the provisions of section 40 of this Act.

SEC. 246. DISMISSAL OF PROCEEDING OR ADJUDICATION OF BANKRUPTCY.

Upon the dismissal of a proceeding under this chapter, or the entry of an order adjudging the debtor a bankrupt, the judge may allow reasonable compensation for services rendered and reimbursement for proper costs and expenses incurred in such proceeding prior to such dismissal or order of adjudication by any persons entitled thereto, as provided in this chapter, and shall make provision for the payment thereof, and for the payment of all proper costs and expenses incurred by officers in such proceedings.

SEC. 247. HEARING OF APPLICATIONS.

The judge shall fix a time of hearing for the consideration of applications for allowances, of which hearing notice shall be given to the applicants, the trustee, the debtor, the creditors, stockholders, indenture trustees, the Securities

and Exchange Commission, and such other persons as the judge may designate, * * *.

SEC. 248. DISMISSAL OF PROCEEDING AND REINSTATEMENT OF BANKRUPTCY; CHARGING OF ALLOWANCES IN BANKRUPTCY.

In the case of the dismissal of a proceeding under this chapter and the entry of an order therein directing that a superseded bankruptcy be proceeded with, the compensation allowed by the judge, in the course of the proceeding under this chapter, to the referee, marshal, receiver, or trustee in the bankruptcy proceeding for services rendered by them in such bankruptcy proceeding shall be deemed to have been allowed in such bankruptcy proceeding, and such compensation shall be considered in connection with the making of future allowances therein or shall be readjusted, so as to comply with the provisions of this Act fixing their compensation in a bankruptcy proceeding.

SEC. 249. STATEMENT OF CLAIMS OR STOCK ACQUIRED OR TRANSFERRED AFTER COMMENCEMENT OF PROCEEDING.

Any person seeking compensation for services rendered or reimbursement for costs and expenses incurred in a proceeding under this chapter shall file with the court a statement under oath showing the claims against, or stock of, the debtor, if any, in which a beneficial interest, direct or indirect, has been acquired or transferred by him or for his account, after the commencement of such proceeding. No compensation or reimbursement shall be allowed to any committee or attorney, or other person acting in the proceedings in a representative or fiduciary capacity, who at any time after assuming to act in such capacity has purchased or sold such claims or stock, or by whom or for whose account such claims or stock have, without the prior consent or subsequent approval of the judge, been otherwise acquired or transferred.

SEC. 250. APPEALS.

Appeals may be taken in matters of law or fact from orders making or refusing to make allowances of compensation or reimbursement, and may, in the manner and within the time provided for appeals by this Act, be taken to and allowed by the circuit court of appeals independently of other appeals in the proceeding, and shall be summarily heard upon the original papers.

SEC. 256. RIGHT TO PETITION FOR REORGANIZATION DURING PENDENCY OF PRIOR PROCEEDINGS.

A petition may be filed under this chapter notwithstanding the pendency of a prior mortgage foreclosure, equity, or other proceeding in a court of the United States or of any State in which a receiver or trustee of all or any part of the property of a debtor has been appointed or for whose appointment an application has been made.

SEC. 257. TRUSTEE OR DEBTOR IN POSSESSION VESTED WITH RIGHTS OF PRIOR FIDUCIARY.

The trustee appointed under this chapter, upon his qualification, or if a debtor is continued in possession, the debtor, shall become vested with the rights, if any, of such prior receiver or trustee in such property and with the right to the immediate possession thereof. The trustee or debtor in possession shall also have the right to immediate possession of all property of the debtor in the possession of a trustee under a trust deed or a mortgagee under a mortgage.

SEC. 258. PROTECTION OF OBLIGATIONS OF PRIOR FIDUCIARY; PAYMENT OF COSTS AND EXPENSES.

The judge shall make such provision as may be equitable for the protection of the obligations incurred by a receiver or trustee in such prior proceeding and for the payment of the reasonable costs and expenses incurred therein as may be allowed by the judge.